City of Valdez

212 Chenega Ave.
Valdez, AK 99686

Meeting Agenda

City Council

Thursday, November 1, 2018 | **6:00 PM** | **Council Chambers**

Work Session (City Personnel Regulations: Arbitration)

WORK SESSION AGENDA - 6:00 pm

Transcribed minutes are not taken for Work Sessions. Audio is available upon request.

1. Work Session: Amendment to City Employee Personnel Regulations Regarding Arbitration

Attachments:
- Legal Memo.Arbitration.Pros-Cons.2018-10-23.Final
- 101618 Agenda Statement - Resolution # 18-0035 (Postponed to 110718 Regul
- DRAFT Resolution #18-35
- Attachment A Amendments to Personnel Regs

File #: 18-0373, **Version:** 1

ITEM TITLE:
Work Session: Amendment to City Employee Personnel Regulations Regarding Arbitration

SUBMITTED BY: Elke Doom, City Manager

FISCAL NOTES:

Expenditure Required: N/A
Unencumbered Balance: N/A
Funding Source: N/A

RECOMMENDATION:

Work session only - Receive and file

SUMMARY STATEMENT:

During the October 16, 2018 regular City Council meeting, Resolution # 18-35, amending the City Employee Personnel Regulations regarding arbitration, was postponed.

City Council asked for a work session with the City Employee Relations Team (ERT) prior to taking action on the Resolution at the next regular Council meeting.

Attachments to this agenda item:

- Memo from the City attorney regarding the pros and cons of eliminating arbitration from the City Employee Personnel Regulations.
- Agenda statement from the October 16th meeting regarding Resolution #18-35
- Draft Resolution # 18-35
- Attachment A to Resolution # 18-35 outlining amendments to City Employee Personnel Regulations

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M E M O R A N D U M

TO: Valdez City Council

COPY TO: Elke Doom, City Manager
Tim James, Human Resources Director

FROM: Robin O. Brena, Esq.
Kevin G. Clarkson, Esq.

DATE: October 29, 2018

RE: Valdez/Human Resources
Pros and Cons of Mandatory Employment Arbitration
Our File No. 1374-018

I. EXECUTIVE SUMMARY

Employees have a right to pursue claims related to termination, suspension, and demotion. If the City's Personnel Regulations do not direct that such employee claims must be brought in mandatory arbitration, then employees will have the right to take their claims to a court of law. Eliminating mandatory arbitration does not eliminate employee claims, it simply directs those claims into a court of law.

The City can lessen the risk of expensive, lengthy, unpredictable, public employee litigation in a court of law by directing all employee disputes regarding termination, suspension and demotion into binding arbitration. The pros of establishing a system of binding employee arbitration regarding termination, suspension, and demotion are (1) lessening the expense of employee disputes, (2) eliminating the risk of unpredictable juries, (3) gaining efficiency in dispute resolution, (4) gaining informality in dispute resolution, (5) gaining privacy in employee disputes, (6) getting relatively quicker resolutions, (7) gaining a dispassionate arbitrator as a decision maker, and (8) bringing disputes to final resolutions quicker.

The cons of mandatory employee arbitration include (a) discovery limitations, (b) informality, (c) inability to appeal unfavorable decisions, (d) administrative charges can proceed regardless, and (e) baby-splitting by arbitrators.

All considered, the benefits of mandatory arbitration outweigh the detriments.

II. DISCUSSION

Whether the City requires mandatory arbitration for its employees who are terminated, suspended, or demoted, those employees have the right to pursue claims against the City. Eliminating mandatory arbitration from the City's personnel regulations and the employee grievance procedures will not eliminate employee claims, it will simply direct the employee claims into the more formal forum of a court of law. Providing or not providing for mandatory employee arbitration directs employee claims into either (a) an informal litigation procedure before an arbitrator, or (b) a formal litigation procedure in a court of law. Myriad legal scholars and employment law practitioners have written about the pros and cons of requiring or not requiring mandatory employment arbitration and they nearly always identify the following same considerations.

There are pros and cons to both approaches. The pros and cons are set forth below.

A. Pros of Mandatory Employment Arbitration.

There are numerous pros to requiring employees to take their employment-related disputes to binding arbitration. These pros are as follows:

1. Expense. Arbitration is, as a general matter, less expensive than litigation in a court of law. Arbitration can at times be drawn out and expensive, but when compared to formal litigation in a court of law, arbitration will nearly always be significantly less expensive. Arbitration is typically two-thirds less exp**e**nsive than litigating in a court of law. Shortened discovery methods and discovery schedules along with less motion practice, help lessen the expense of employment arbitration in comparison to formal litigation in a court of law.

2. No Juries. In arbitration, the decision maker is a single arbitrator or a panel of arbitrators. Arbitrators tend to be attorneys or former judges. These types of professional arbitrators tend to be more dispassionate in their decision making and more predictable and reasonable in awarding relief, including damages, to employees as compared to juries. Juries, which are comprised of citizens from the community, can be both impassioned and unpredictable. An unfavorable decision from an arbitrator is less likely to be extreme whereas a jury can magnify the impact of a losing litigation on an employer.

3. Choice of the Arbitrator. In a court of law, there is only minimal control over the choice of judge who will preside over a case. If an employee files a claim

in federal court, there is no control over the selection of the presiding judge. In Alaska state courts a party has a right to one preemption of a judge and, thereafter, has no control over the selection of the judge. In arbitration, the parties have more control over the selection of the arbitrator. Arbitrators are selected by either a process of elimination—a list is presented by a neutral organization like the American Arbitration Association and each side then strikes a certain number of names from that list—or by agreement of the parties.

4. Efficiency and Early Resolution. Litigation in a court of law can take from one to one-and-a-half years to complete and another one to two years to complete on appeal. If the appellate court reverses and remands the trial court or a jury verdict, then the case can take even longer. Arbitrations can be streamlined to be completed in less than one year, and there are only limited appeal rights from an arbitrator's decision. If an employer prevails in arbitration, and the empolyee appeals, the arbitrator's decision is subsequently reviewed in a court of law based upon an extremely favorable standard of review. An arbitrator's decision can be reversed on appeal only for serious errors by the arbitratror.

5. Informality. Arbitration hearings are more flexible in terms of their location, venue, and daily schedule. A court is extremely rigid and inflexible in all of these areas.

6. Privacy. There are no public records in arbitration. The media and press do not have access to an arbitration proceeding or hearing. Thus, in the case of public City employees, there is less risk of the arbitration becoming a news item. Records filed in a court of law are generally public, and the media and press can have access to the courtroom and court files.

7. Finality. Arbitration proceedings generally resolve matters without further litigation. This is true because of the very favorable standard of review under which arbitration decisions are reviewed on appeal to a court. Arbitration decisions are reviewed and reversed only for such things as serious arbitrator misconduct, bias, corruption, and acting outside the scope of authority. Because it is extremely less likely to have an arbitrator's decision overturned on appeal, it is much less frequent that parties appeal an unfavorable arbitration decision.

B. Cons of Mandatory Employment Arbitration.

There are cons to requiring employees to take their employment-related disputes to binding arbitration. These cons, many of which are similar to the pros, are as follows:

1. Finality. The reduced options to successfully appeal an arbitrator's decision is a two-edged sword. The protective standard of review on appeal that requires an arbitrator to have made a significant error in order to overturn his decision, runs to the benefit of an employer if it prevails in the arbitration but works against the employer if it

loses in the arbitration. Arbitration decisions are reviewed and reversed only for such things as serious arbitrator misconduct, bias, corruption, and acting outside the scope of authority. Unlike a trial court, an arbitrator's decision cannot be overturned for general errors in fact or law.

2. **Discovery Limitations.** The compacted and limited discovery practices in arbitration can also work for or against an employer. In some cases, the employer may need a broad range of discovery from third-parties, and litigation in a court offers more rights to subpoena and compel witnesses and documentary evidence than does arbitration. These types of expanded discovery activities add to ligitation expense.

3. **Informality.** Arbitrators tend to be much more lax in terms of the types and forms of evidence they will permit a party to present. This can cut both ways, for and against an employer, but if the employer wishes to prevent an employee from presenting a great deal of material that would be inadmissible under the Rules of Evidence, then a court of law is a better forum. The informality can, however, work in favor of the employer as well as the employee.

4. **Administrative Charges.** Arbitration does not prevent government agencies like the Department of Labor, Civil Rights or Equal Rights Commissions, and/or the Equal Employment Opportunity Commission from investigating and pursuing employee complaints. In some instances, an employer could arbitrate a matter only to have a government agency initiate an investigation, prosecution, or an enforcement action.

5. **Baby Splitting.** One common objection to arbitration is that arbitrators are often reluctant to dismiss an employee claim outright and sometimes search for a way to award an employee something even if only a token amount. This kind of spli-the-baby approach is less likely in a court of law.

III. CONCLUSION

There are pros and cons to establishing mandatory arbitration for the resolution of employee disputes. As a whole, considering the comparative costs and the risks of unpredictable jury determinations, the pros of requiring mandatory employment arbitration outweigh the cons.

KGC/emh

File #: RES 18-0035, **Version:** 1

ITEM TITLE:
#18-35 - Amending the City of Valdez Personnel Regulations and Creating an Effective Date
SUBMITTED BY: Elke Doom, City Manager

FISCAL NOTES:

Expenditure Required: Click here to enter text.
Unencumbered Balance: Click here to enter text.
Funding Source: Click here to enter text.

RECOMMENDATION:

The City Manager supports the proposed amendments to the city personnel regulations.

SUMMARY STATEMENT:

The City of Valdez Personnel Policy has a progressive disciplinary process that addresses employee performance in the workplace. Some years ago the sitting council agreed to provide an arbitration option for employees. This was created to provide another level of security for employees following the grievance process for an employment action such as demotion or termination.

Upon careful review of our progressive disciplinary process and the many options it provides for employee improvement, it is my recommendation that the right to arbitrate is removed from our Personnel Regulations.

The Employee Relations Team (ERT) has expressed concerns that the progressive disciplinary process has not been followed consistently across all departments. The ERT has requested that HR develop in-house training for all Managers and Supervisors. Administration agrees that training and consistent application of our personnel regulations is imperative to improve employee improvement strategies. Administration will provide regular training and guidance to supervisors and managers.

Amendments to Section 7.3 through Section 9.5 of the personnel regulations are attached. ~~Strikeout~~ indicates removal of existing language, red line indicates new language.

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 18-35

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, AMENDING THE "CITY OF VALDEZ PERSONNEL REGULATIONS" AND CREATING AN EFFECTIVE DATE

WHEREAS, Valdez Municipal Code Chapter 2.08 – City Manager, mandates that "The City Manager shall have the power, subject to council approval, to make or amend rules and regulations relating to…all of the employees of the city; except that no rule or regulation shall contravene the principles that the employment of city personnel shall be on the basis of merit and fitness…," and,

WHEREAS, Section 2.08.040 (B) "Regulation of Personnel", mandates these rules and regulation to be on file and available for inspection in the offices of the City Clerk and shall also be available in pamphlet form entitled, "City of Valdez-Personnel Regulations; and,

WHEREAS, Resolution No. 08-79 adopted the most recent version of the Personnel Regulations in 2008; and,

WHEREAS, the Employee Relations Team was notified by the City Manager as required in Section 1.2 of the personnel regulations and provided the opportunity for review and input on the proposed amendments.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that

Section 1. The City does hereby approve and adopt the amended City of Valdez Personnel Regulations as attached.

Section 2. This Resolution is affective upon adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this _____day of _____, 2018.

CITY OF VALDEZ ALASKA

_____
Jeremy O'Neil, Mayor

ATTEST:

_____
Sheri L. Pierce, MMC, City Clerk

7.3 Annual Performance Evaluation Reports:

7.301 Annual performance evaluations are used for the following purposes:

A. to provide a basis for informed decisions on such matters as promotion, work assignments, training, recognition, and continuation of employment;
B. to keep employees advised of what is expected of them and how well they are meeting these expectations;
C. to stimulate improved work performance and commitment to City and departmental goals and objectives;
D. to provide a basis for meeting employee needs for growth and development
E. to foster an effective working partnership between supervisor and employee; and
F. to determine the effectiveness of placement and promotion actions.

7.302 Preparation. An annual performance evaluation report shall be prepared for all employees as set forth below. Each department head, with assistance and approval of the City Manager, shall develop standards of performance to be used as a basis for personnel evaluation and shall reference quality and quantity of work, the manner in which service is rendered, and such characteristics as will measure the value of the employee to the City. Employees should be informed of such standards.

7.303 Nature and Form of Reports. The City Manager shall prescribe the nature and form of annual evaluation reports, shall investigate the accuracy of challenged evaluation reports, and shall, when justified, take any necessary action required to ensure that the evaluation report accurately reflects the facts. The City Manager shall provide for reasonably uniform application of evaluation standards. Performance evaluation reports shall be made before completion of each introductory period, annually before anniversary dates, and upon demotion or transfer. Performance evaluation reports may also be completed at any other time at the discretion of a department head with approval of the City Manager. In addition to yearly evaluations, the City Manager encourages supervisors to hold quarterly feedback sessions with employees to increase feedback opportunities (positive, as well as negative) and provide more performance milestones leading up to the annual evaluation.

7.304 Review of Performance Evaluation with employees. The supervisor or department head shall prepare the evaluation report and discuss it privately with the employee to whom it pertains. The employee may comment on the content of the performance evaluation report; such written comments shall be attached to the report and become part of it.

7.305 Merit Increases. If an employee is due a merit increase associated with his/her annual evaluation and their supervisor does not complete the evaluation by the employee's annual evaluation date; all scheduled merit increases will be awarded on time. A personnel officer will notify the supervisor of the supervisor who did not get the evaluation done on time.

7.306 Distribution of Reports. Once the performance evaluation has been signed by all required reviewers, administration shall furnish the employee with a copy of the performance evaluation report. The original shall be filed in the employee's personnel file.

7.307 The substance of a performance evaluation report shall not be the subject of a grievance. ~~or arbitration~~.

Section 8 – Disciplinary Actions

8.1 General:

The personnel officer will advise department heads in the handling of all disciplinary matters. The personnel officer shall approve all disciplinary actions other than oral or written reprimands, prior to the completion of the action, unless, in the judgment of the department head, immediate disciplinary action is required. The basis for taking immediate action shall be limited to those instances involving the possibility of immediate danger to health, safety, and welfare of city employees or the public, or destruction of property. In such instance, the department head shall have the authority to immediately place the employee on administrative leave pending investigation by the personnel officer.

8.2 Procedure:

8.201 A Working Day is defined as normal city business days, which are Monday through Friday, 8:30 am to 5:00 pm, excluding weekends and holidays..

8.202 Notice and Pre-Disciplinary Conference

Prior to approving a department head's recommendation for disciplinary action resulting in pay loss or dismissal, the personnel officer shall give the affected employee written notice of the intent to discipline containing a reasonably specific statement of the basis for the intended discipline and an explanation of the employee's right to file a grievance pursuant to Section 9. Upon receipt of the notice, the employee shall be given an informal opportunity to respond to the personnel officer, in person or in writing, to present reasons why the proposed action should not be taken against him/her. After considering the employee's response, the personnel officer shall determine whether there are reasonable grounds to believe that the charges against the employee are true and make a decision on whether or not to support the proposed action.

8.203 Investigation of Charges

The personnel officer or other person designated by the City Manager is authorized to investigate charges against an employee. The employee and other witnesses may be questioned and readily available evidence collected. Searches of offices, desks, lockers and other storage devices shall not be undertaken without the express permission of the

personnel officer. Such searches will be authorized only when there are reasonable grounds for suspecting that such a search will turn up evidence that an employee is guilty of work related misconduct, negligence, or unsatisfactory performance. If the charges involve criminal conduct, the investigation will be conducted by the Police Department in the same manner as any other criminal investigation.

8.204 Investigative Administrative Leave

The employee may be placed on investigative administrative leave pending investigation of charges. Placement on investigative administrative leave is not subject to grievance review.

8.205 Effective Date of Disciplinary Action

Upon the personnel officer's determination that a disciplinary action is warranted, the discipline will be imposed and the employee will be removed from investigative administrative leave status. Should the disciplinary action be reversed or modified during the grievance process, the employee will be compensated for lost pay from the effective date of the personnel officer's decision up through the date of reversal or modification.

8.206 Citizen Complaints Regarding City Employees

Citizen complaints, which are submitted in writing and signed by the complainant, about City employees should be directed to the employee's department head. Complaints about department heads should be directed to the City Manager. The employee should be given an opportunity to respond to the charge. If warranted, an investigation may be conducted pursuant to Section 8.202. The department head or City Manager shall inform the complainant as to the resolution of the matter.

8.3 Forms of Discipline & Just Cause:

8.301 Progressive Discipline.

Progressive discipline shall be followed when practicable. Supervisors should impose discipline in steps of increasing severity. The number of steps to be employed may vary in accordance with the severity of the conduct. Generally, when the severity of the inappropriate conduct warrants, and it is in the best interest of the City, any of the following forms of discipline may be imposed at any time so long as such discipline is supported by just cause:

A. Oral reprimand
B. Written reprimand
C. Disciplinary Probation
D. Step Reduction
E. Transfer
F. Demotion

G. Suspension
H. Dismissal

Other sanctions may be imposed as warranted by the City Manager for particular situations or to address particular problem areas.

8.302 Just Cause.

Proof of any one of the following by a preponderance of the evidence shall constitute just cause for disciplinary action:

A. Poor performance;
B. Inefficiency;
C. Lack of the qualifications required of the position held;
D. Insubordination;
E. Excessive or unexcused absenteeism;
F. Excessive or unexcused tardiness;
G. Harassment of other employees, to include sexual harassment and/or other threatening, intimidating, coercive or abusive conduct;
H. Failure to work harmoniously with other employees or the public;
I. Violation of a rule, policy, procedure or regulation, which was known or reasonably should have been known to the employee;
J. Violation of an oral or written directive which was known or reasonably should have been known to the employee;
K. The consumption, use, possession of or being under the influence of intoxicating beverages or illegal drugs during the employee's work shift, including meal or other breaks, or while on City property;
L. Dishonesty;
M. Any other conduct commonly recognized by reasonable persons as justification for discipline.

8.4 Disciplinary Reports:

8.401 Disciplinary Action Reports.

All disciplinary actions shall be documented. When an oral reprimand is given, a record of the date, time and subject of the oral reprimand shall be prepared. Employees shall be given an opportunity to review the reports of oral reprimands and any written reprimands with the supervisor. If the employee disagrees with the facts or conclusions contained in the report, the employee shall be permitted to submit, within three working days after reviewing the report with the supervisor, a statement of disagreement. The statement shall clearly and concisely set forth the employee's reasons for disagreement. One copy of the employee's statement shall be appended to the report and shall become a part of it. If the employee has no comment or has not responded within the required time frame, it shall be so noted and the report shall be filed in the employee's personnel file.

8.402 Periodic Reviews.

The supervisor will complete periodic reviews of the employee's progress in correcting the cause of the original discipline. Such reports will be made a part of the employee's personnel file.

8.403 Written Statement.

A supervisor at any time may require a written statement from a subordinate explaining the employee's conduct or omissions.

8.5 Disciplinary Probation:

8.501 General.

For just cause, an employee may be placed on disciplinary probation. The duration of disciplinary probation may not exceed 26 weeks. During a period of disciplinary probation, an employee:

(A) retains regular status,
(B) may not use scheduled personal leave,
(C) may not use leave without pay,
(D) may not accrue or use comp time
(E) shall provide evidence satisfactory to the department head of the reasons for using any unscheduled leave,
(F) must comply with all requirements and conditions of the probation.

8.502 Failure to Correct Deficiencies.

An employee who fails to correct less than acceptable performance or repeats unacceptable behavior during a period of disciplinary probation is subject to further disciplinary action.

8.503 Application.

Disciplinary probation may be used as an independent disciplinary measure or in conjunction with another disciplinary measure.

8.6 Step Reductions:

8.601 General.

For just cause, the salary of a regular employee who is placed at other than step A may be reduced by one step. The period the employee serves at the lower step may not exceed 26 weeks without review.

8.602 Failure to Correct Deficiencies.

An employee is subject to further step reduction or other disciplinary action if the employee fails to correct less than acceptable performance or repeats unacceptable behaviors during the period of step reduction.

8.603 Restoration of Salary.

The salary step(s) shall be restored when, upon review, it is determined that the unacceptable behavior has been corrected.

8.7 Transfer:

An employee may be transferred to a different section or department for just cause. A transfer may or may not also include a demotion.

8.8 Demotion:

For just cause, an employee may be demoted in position status and/or pay status. An employee demoted for disciplinary reasons shall be placed in Step A of the lower range unless otherwise determined by the City Manager

8.9 Suspensions:

8.901 General.

An employee may be suspended for just cause without pay for a period of not over four full workweeks for disciplinary reasons. Further disciplinary action may be cause for dismissal.

8.902 Special Rules for Exempt Employees.

Suspension of employees exempt from overtime pay requirements shall be subject to the following provisions:

A. Suspensions of less than one (1) full workweek shall be paid except as set forth in subsection B. However, a deduction equivalent to the paid suspension may be taken from the amount of the accrued paid leave the exempt employee has accumulated.

B. If the suspension of an exempt employee results from the violation of a safety rule or rule of major significance intended to protect life and property, the suspension may be without pay even if it is less than a full workweek.

C. All other unpaid suspensions of exempt employees must be for a full workweek or some multiple of a full workweek.

8.10 Dismissal:

An employee may be dismissed from employment for just cause. Except in a case involving a hazard, or when the best interests of the city will not be served, two weeks' notice of dismissal will be given the employee.

8.11 Non-Disciplinary Termination:

City employees may be terminated when it is necessary to reduce the number of employees because of lack of funds or work or when related persons are employed in violation of Section 4.102. Two weeks written notice shall be provided. Terminations under this section are not subject to grievance review ~~or arbitration~~.

Section 9. Grievance ~~and Arbitration~~ Procedures

9.1 General Policy:

9.101 Sole and Exclusive Remedy. Employees shall have the right individually, as a group, or through a designated representative, to present grievances, and shall be free from restraint, interference, discrimination, or reprisal in this regard. Grievances shall be presented through the established lines of authority. It is the policy of the City to require its employees to utilize an exclusive, final, and binding mechanism for the adjustment of any and all workplace controversies, including controversies concerning the meaning or application of the provisions of the Personnel Regulations.

9.102 Representation. The employee may select a fellow employee, supervisor or other representative to assist in the presentation of a grievance or appeal.

9.2 Grievance Defined:

A grievance is a contention that a specific action or specific failure to act by the City violates a specific right established by constitutional guarantee, statutory law, common law, or the city's Personnel Regulations. The substance of a performance evaluation report, or placement on investigative administrative leave status are among the types of administrative actions not included within the definition of "grievance."

9.3 General Grievance Procedure:

An employee with a grievance regarding working conditions or qualifying employment policies may initiate the grievance process at the appropriate supervisory level as set forth in subsection (A) subject to the limitations set forth in subsection (B):

(A) Procedures.

1. The employee shall present the grievance to the immediate supervisor within five working days of becoming aware of the action or matter being grieved. If the immediate supervisor is not available, the employee will be allowed up to an additional five (5) working days for their supervisor to become available. If the supervisor is not available within this time, the employee will present the grievance to the next supervisor in the chain of command.

2. The supervisor and the employee shall attempt to informally resolve the grievance within five working days of the presentation of the grievance. If the resolution of the grievance is not acceptable to the employee, then;

3. The employee shall, within five working days of the informal discussion, present the grievance, including the relief sought, in writing to the department head.

4. The department head shall respond to the grievance in writing within ten working days of personal receipt of the grievance. If the decision of the department head is not acceptable to the employee, then;

5. The employee shall have the option to present the grievance to the City Manager within five working days of the department head's decision, to include a written statement explaining why the decision is not acceptable.

6. The City Manager shall respond to the grievance within 15 working days of personal receipt of the grievance. The decision must be in writing and include the City Manager's findings, conclusions, and disposition of the grievance.

7. The City Manager may designate an officer to investigate the grievance and recommend to the City Manager findings, conclusions, and the disposition of the grievance. At the City Manager's discretion, the officer may be a department head; the assistant City Manager or an independent officer experienced in personnel matters.

8. If the City Manager is the immediate supervisor or the primary decision maker in the matter being grieved, the employee within five working days of the decision may request an independent grievance review officer (GRO) to review the grievance. The request shall include a written statement explaining why the decision is not acceptable. The GRO shall respond to the grievance within 15 working days from the time the GRO is appointed. The City attorney shall provide a list of 3 Grievance Review Officers. The employee may strike one and the City Manager may strike one. The remaining Grievance Review Officer shall be the one appointed. Upon

concurrence by both the employee and the City Manager, the City Clerk may serve as the GRO.

9. If the employee fails to meet the time limits set out in this grievance procedure, the grievance will not be considered further.

10. If the City fails to meet the time limits set out in this grievance procedure, the employee may advance the grievance to the next step in the procedure.

11. The parties may agree to extend the time limits at any step of this procedure. Any agreement to extend the time limits must be in writing signed by both parties.

B. Limitations

1. This section shall be used for all qualifying employment related matters except those actions that result in a dismissal, demotion, or suspension without pay (see Section 9.4).

2. Temporary, Limited Seasonal, and Limited Part-time employees may not use this section.

3. The decision of the City Manager or when applicable, the GRO, shall be final and binding.

9.4 Dismissal, Demotion, or Suspensions Without Pay:

Only employees with regular status who are dismissed, demoted in pay, or suspended without pay may pursue the following grievance procedure:

A. The employee shall, within five working days of receipt of written notification of the action, file a written grievance with the City Manager setting forth the reasons for the grievance and stating the relief sought. If the employee fails to file a written grievance within that period, the grievance will not be considered further. If the City Manager is the immediate supervisor or the primary decision maker in the matter being grieved, the employee within the same five working days referenced above may request that an independent grievance review officer (GRO) be appointed by the City Attorney. The request shall include a written statement explaining why the decision is not acceptable. The GRO shall respond to the grievance within 15 working days from the time the GRO is retained. The City attorney shall provide a list of 3 individuals. The employee may strike one and the City Manager may strike one. The remaining individual shall be the one GRO appointed. Upon concurrence by both the employee and the City Manager, the City Clerk may serve as the GRO.

B. If the City Manager considers the grievance the City Manager may designate an officer to investigate the grievance and recommend to the City Manager findings,

conclusions, and the disposition of the grievance. At the City Manager's sole discretion, the officer may be a department head, the assistant City Manager, or an independent officer experienced in personnel matters.

C. The City Manager or GRO, whichever is considering the grievance, shall respond to the grievance within 15 working days of personal receipt of the grievance. The decision must be in writing and include the City Manager's or GRO's findings, conclusions, and disposition of the grievance. The City Manager or GRO may recommend a lesser form of discipline.

~~D. If the decision of the City Manager is not acceptable to the employee, the employee may within 5 working days of receipt of the decision, file a written request with the City Manager to submit the grievance to binding arbitration.~~

~~E. If the City Manager is the immediate supervisor or the primary decision maker in the matter being grieved, the employee within five working days may request that an independent grievance review officer (GRO) be appointed by the City Attorney. The request shall include a written statement explaining why the decision is not acceptable. The GRO shall respond to the grievance within 15 working days from the time the GRO is retained. The City attorney shall provide a list of 3 individuals. The employee may strike one and the City Manager may strike one. The remaining individual shall be the one GRO appointed. Upon concurrence by both the employee and the City Manager, the City Clerk may serve as the GRO.~~

~~F. If the decision of the GRO is not acceptable to the employee, the employee may within 5 working days of receipt of the decision, file a written request with the City Manager to submit the grievance to binding arbitration.~~

D~~H~~. The parties may agree to extend the time limits at any step of this procedure. Any agreement to extend the time limits must be in writing signed by both parties.

E. The decision of the City Manager or when applicable, the GRO, shall be final and binding.

~~9.5~~ ~~Arbitration:~~

~~The employee(s), within five working days of receiving the City Manager's decision, or alternatively, the grievance review officer's decision, may file with the City Manager a notice of intent to submit the grievance to binding arbitration.~~

~~9.501 Procedure.~~

~~The following procedure shall be followed:~~

A. The employee shall within five working days of filing the notice of intent to arbitrate, notify the American Arbitration Association, which shall appoint a single neutral arbitrator from within the State of Alaska to hear and determine the case unless the grievant and the city mutually agree to another arbitrator or a panel of three (3) arbitrators.

B. The arbitration proceedings shall be governed by the Uniform Arbitration Act (AS 09.43), the Expedited Employment Arbitration Rules of the American Arbitration Association Employment Dispute Resolution Rules, and the city laws and regulations. Conflicts shall be governed by reference to these authorities in this order: (i) City of Valdez laws and regulations; (ii) Expedited Employment Arbitration Employment Dispute Resolution Rules of the American Arbitration Association; (iii) Uniform Arbitration Act.

C. The arbitrator shall promptly hear and decide the case. Both parties shall be permitted to present any evidence and to cross-examine witnesses. Either party may be represented by an attorney.

D. The arbitrator shall have no right to amend, modify, nullify, or ignore provisions of the aforementioned governing authorities and shall consider and decide only the specific issue(s) submitted and has no authority to decide issues not submitted.

E. The standard of review to be applied by the arbitrator shall be whether the decision, action, or inaction of the City was reasonable in view of the City's responsibilities and obligations, both fiscal and political, as a public entity deriving its powers from and existing to serve the purposes of the people. The arbitrator's decision shall not be based on whether the decision, action or inaction of the city was "the best" or "fairest" decision, action, or inaction, but rather, in order for the grievant to prevail, the arbitrator must find that the City's decision, action or inaction was unreasonable in view of the city's responsibilities and obligations outlined above, the City Charter, the City code, or these Personnel Regulations.

F. The arbitrator's decision must determine who the losing party is. Upon such determination, the arbitrator may assess the arbitrator's fee and costs against the losing party or otherwise apportion the costs between the parties as deemed reasonable in the arbitrator's sole discretion. Costs relating to attorney's fees and those associated with any witnesses, including expert witnesses, will be assessed against the party who incurred them.